

EPA Region 5 Records Ctr.



226452

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20004-2401
TEL 202.662.6000
FAX 202.662.6291
WWW.COV.COM

WASHINGTON, DC
NEW YORK
LONDON
BRUSSELS
SAN FRANCISCO

FACSIMILE

DATE	TOTAL PAGES W/COVER	SUITE
December 12, 2001	3	721-E

FROM	EMAIL	FAX	TEL
John T. Smith II	SmithJT@cov.com	202-778-5555 (8 pgs)	202-662-5555

TO	FAX	TEL
Mary Fulghum	312-886-0747	312-886-4683

REMARKS

PLEASE SEE THE ATTACHED.

J.T. Smith II

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE NW WASHINGTON, DC
WASHINGTON, DC 20004-2401 NEW YORK
TEL 202.662.6000 LONDON
FAX 202.662.6291 BRUSSELS
WWW.COV.COM SAN FRANCISCO

J. T. SMITH, II
TEL 202.662.5355
FAX 202.778.6355
JTSMITH@COV.COM

December 12, 2001

BY FACSIMILE AND FIRST CLASS MAIL

Mary L. Fulghum
Associate Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604-3590

Re: DuSable Park, Chicago, Illinois

Dear Mary:

Thank you for your letter of December 7, 2001, addressed to me, Vince Oleszkiewicz and Joan Fencik regarding the subject site and approving Kerr-McGee's November 12, 2001 "Investigation Work Plan." I gather from our phone discussion on December 11, that EPA does have certain further comments on this plan. Your letter also recites certain conditions for this approval, deriving from discussions that you, Joan Fencik and I had last month. These conditions appear to reflect a misunderstanding of the conceptual approach that I intended to advance when we were discussing this matter.

The approach that Kerr-McGee recommends would include conduct of the limited further investigation set forth in its November 12 Work Plan, and deferral of any further investigation unless or until the Park District begins landscaping work at the site. We would agree that at the time of such landscaping there should be surveillance monitoring for radiation analogous to that required with respect to subsurface work in

COVINGTON & BURLING

Mary L. Fulghum

December 12, 2001

Page 2 of 3

rights-of-way in areas of Streeterville. If such surveillance monitoring detects the presence of materials contaminated by radionuclides above the 7.1 pico curies per gram action level, River East, Kerr-McGee and the Park District all would be potentially responsible for ensuring removal and disposal of such materials. The potential responsibility of River East and the Park District stems from the fact that one or both these entities owned the DuSable Park site at the time that a substantial amount of material was placed above grade at this site, and it is within the area of this material that EPA has determined there are "gamma anomalies."

While I endorsed, on Kerr-McGee's behalf, the conceptual approach of deferring further radiation surveillance and sampling at the site other than the limited Investigation Work Plan, I did not mean to commit Kerr-McGee to assume responsibility for such monitoring and transport and disposal of any materials exceeding the action level. The relative, initial roles and responsibilities of the parties in addressing such future obligations can be worked out among the three parties, as indeed they have been at other Streeterville sites.

Accordingly, we urge you to clarify this important point in the supplemental letter that you intend to send conveying certain additional, technical comments regarding the Investigation Work Plan.

Sincerely,


John T. Smith II

cc: Vince Oleszkiewicz
Joan Fencik